

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EDWARD J. McCLAIN, JR.

(b) County of Residence of First Listed Plaintiff LEHIGH
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Marc E. Weinstein WEINSTEIN LAW FIRM, LLC 500
Office Ctr Dr., #400, Ft. Wash, PA 19034 267.513.1942

DEFENDANTS

WEATHER TRENDS INTERNATIONAL, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Product Liability	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other Personal Injury	<input type="checkbox"/> 485 Telephone Consumer Protection Act	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 405 Other Personal Injury	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 410 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
		<input type="checkbox"/> 415 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	
		<input type="checkbox"/> 420 Employment	<input type="checkbox"/> 863 DIWC/DIW (405(g))	
		<input type="checkbox"/> 425 Housing/ Accommodations	<input type="checkbox"/> 864 SSID Title XVI	
		<input type="checkbox"/> 430 Amer. w/Disabilities - Employment	<input type="checkbox"/> 865 RSI (405(g))	
		<input type="checkbox"/> 435 Amer. w/Disabilities - Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
		<input type="checkbox"/> 440 Education	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		Habeas Corpus:		
		<input type="checkbox"/> 441 Voting		
		<input type="checkbox"/> 442 Employment		
		<input type="checkbox"/> 443 Housing/ Accommodations		
		<input type="checkbox"/> 445 Amer. w/Disabilities - Employment		
		<input type="checkbox"/> 446 Amer. w/Disabilities - Other		
		<input type="checkbox"/> 448 Education		
		Other:		
		<input type="checkbox"/> 510 Motions to Vacate Sentence		
		<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC sec. 701

VI. CAUSE OF ACTION

Brief description of cause:
Disability discrimination in violation of the Rehabilitation Act of 1973

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

December 13, 2021

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2061 Strathmore Drive Lower Macungie, PA 18062

Address of Defendant: 1 West Broad Street Suite #802 Bethlehem, PA 18018

Place of Accident, Incident or Transaction: Bethlehem, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.DATE: 12/11/2021


Must sign here

Attorney-at-Law / Pro Se Plaintiff

79474

Attorney I.D. # (if applicable)

CIVIL: (Place a in one category only)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
 2. FELA
 3. Jones Act-Personal Injury
 4. Antitrust
 5. Patent
 6. Labor-Management Relations
 7. Civil Rights
 8. Habeas Corpus
 9. Securities Act(s) Cases
 10. Social Security Review Cases
 11. All other Federal Question Cases
 (Please specify): _____

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
 2. Airplane Personal Injury
 3. Assault, Defamation
 4. Marine Personal Injury
 5. Motor Vehicle Personal Injury
 6. Other Personal Injury (Please specify): _____
 7. Products Liability
 8. Products Liability – Asbestos
 9. All other Diversity Cases
 (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Marc E. Weinstein, counsel of record or pro se plaintiff, do hereby certify:

Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

Relief other than monetary damages is sought.

DATE: 12/11/2021

Sign here if applicable
Attorney-at-Law / Pro Se Plaintiff

79474

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD J. MCLAIN, JR.

:
Plaintiff, : CIVIL ACTION
v. : NO. _____

**WEATHER TRENDS
INTERNATIONAL, INC.**

:
: JURY TRIAL DEMANDED
Defendant. :
:

CIVIL ACTION COMPLAINT

I. Introduction

1. Plaintiff prosecutes this disability discrimination action against his former employer. He alleges Defendant terminated his employment on account of his recent cancer diagnosis and treatments, in violation of federal anti-discrimination law.

II. Parties

2. Plaintiff is a male citizen of the United States. At times relevant to this case he was employed by Defendant in the Eastern District of Pennsylvania.

3. Defendant, Weather Trends International, Inc., is a Lehigh Valley-based company that sells long-range weather forecasts to retailers and investors.

4. At all relevant times, Defendant has been a corporate entity organized under the laws of the Commonwealth of Pennsylvania.

5. At all relevant times, Defendant acted through its several agents, servants, and employees (including, but not limited to, those named elsewhere in this Civil Action Complaint), each of whom acted in the course and scope of their employment at all times relevant herein. Defendant is therefore fully responsible for the illegal and discriminatory acts and omissions of the aforesaid individuals pursuant to the principle of *respondeat superior*.

III. Jurisdiction and Venue

6. Plaintiff's claims arise under the Rehabilitation Act of 1973, (29 U.S.C. § 701 *et seq.*) ("Rehab Act").

7. The United States District Court for the Eastern District of Pennsylvania has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. § 1331 (federal question).

8. This Court may properly maintain personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

9. Venue is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendant resides in and/or conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the

claims set forth herein occurred in this judicial district (Plaintiff was working in the Eastern District of Pennsylvania at the time of the illegal actions set forth herein).

IV. Factual Background

10. Plaintiff was hired by Defendant as Executive Vice President for Sales and Marketing in or about May 2020.

11. He reported to William Kirk, CEO and Billy Dunn, President.

12. Plaintiff's primary duties were to build a structure within the sales organization and establish strategic partnerships.

13. In early 2021, Plaintiff was diagnosed with cancer and began a course of treatment shortly thereafter.

14. Plaintiff had several surgeries, and then underwent extensive radiation treatments and speech therapy.

15. In or about August 2021, Plaintiff went out on Short Term Disability in order to facilitate his recovery.

16. On Monday, September 13, 2021 Dunn told Plaintiff that Plaintiff was being discharged.

17. Dunn said finances were really bad. When Plaintiff reminded Dunn that he wasn't costing the company anything at the time since he was out on disability, he replied, "yeah, but our premium will go up."

18. Upon further inquiry, Defendant changed its explanation for Plaintiff's firing,

asserting it was due to poor performance. Yet never once was Plaintiff counseled or criticized for any performance deficiencies.

19. Defendant's explanations are inconsistent and pretextual. The real reason Plaintiff was discharged is because Defendant considered him to be damaged goods after his cancer diagnosis and treatments.

First Cause of Action - Violations of the Rehab Act

20. The foregoing paragraphs are incorporated in their entirety as if set forth in full.

21. Defendant has been the recipient of federal financial assistance and is therefore subject to the provisions of the Rehab Act.

22. The Rehab Act prohibits discrimination "against a qualified individual with a disability because of that disability."

23. Plaintiff is a "qualified individual with a disability" because he has been diagnosed with cancer, and has undergone surgeries and treatment for his cancer.

24. Moreover, in being diagnosed with cancer, and undergoing surgeries and treatment for cancer, Plaintiff has (a) a physical or mental impairment that substantially limits one or more of his major life activities; or (b) a record of such an impairment; or (c) was regarded as having such an impairment.

25. Cancer has substantially limited Plaintiff's major life activity of normal cell growth.

26. Cancer has also substantially limited Plaintiff's major life activities of speaking, swallowing and eating.

27. By deliberately and purposefully firing Plaintiff due to his cancer diagnosis and treatments, Defendant has engaged in numerous, ongoing, repeated, and intentional violations of the Rehab Act.

28. As a result of Defendant's unlawful conduct, Plaintiff has suffered pecuniary losses, substantial emotional distress, humiliation, inconvenience and other non-pecuniary losses.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

- A. Defendant is to be permanently enjoined from discriminating against Plaintiff on any basis forbidden by the Rehab Act;
- B. Defendant is to promulgate and adhere to a policy prohibiting disability discrimination;
- C. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits he would have received had it not been for the illegal actions including but not limited to back pay, front pay, salary, pay increases, bonus, insurance, benefits, training, promotions, and seniority;
- D. Plaintiff is to be awarded compensatory damages for the pain, suffering, emotional distress, anguish and financial strain caused him by Defendant's actions and omissions;
- E. Plaintiff is to be accorded other equitable and legal relief as the court deems just, proper and appropriate;
- F. Plaintiff is to be awarded the costs and expenses of this action and a reasonable attorney's fee as provided by applicable federal law;

G. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

WEINSTEIN LAW FIRM, LLC

By: 

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267.513.1942
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Counsel to Plaintiff

Dated: December 13, 2021